



COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

D.T.C. 19-AR

July 27, 2021

Investigation by the Department of Telecommunications and Cable on its own motion, pursuant to G. L. c. 159, §§ 12, 32, and 39, and G. L. c. 166, §§ 11 and 12, regarding the failure by individually-named common carriers of telecommunications services to file annual returns for calendar years 2016 and/or 2017.

ORDER VACATING JUDGMENT

In the matter of:

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| Gardner Post No. 129, American Legion, Inc. | 2017 Annual Return | 19-AR-17 |
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I. INTRODUCTION

On June 11, 2021, Gardner Post No. 129, American Legion, Inc. (“Gardner”) filed a 2017 annual return with the Department of Telecommunications and Cable (“Department”). Gardner failed to timely file a return during the proceedings in D.T.C. 19-AR, and the Department consequently cancelled Gardner’s tariff and registration, and directed the removal of public access line services from its payphone(s). Additionally, the Department assessed statutory forfeitures against Gardner. In this Order Vacating Judgment, the Department, on its own motion, reconsiders its decision to cancel Gardner’s tariff and registration and to assess statutory forfeitures against Gardner. Based on the evidence outlined below, the judgment against Gardner in D.T.C. 19-AR is VACATED.

II. BACKGROUND AND PROCEDURAL HISTORY

On November 4, 2020, the Department issued an Order involving the failure of several companies’ to file annual returns for calendar years 2016 and/or 2017. *See* D.T.C. 19-AR, Order (“Order”). In the Order, the Department, *inter alia*, found that Gardner failed to file its 2017 annual return due to the Department on March 31, 2018, and that the failure to file was unreasonable. *Id.* at 16-18. The Department assessed statutory forfeitures against Gardner totaling \$14,450 as of November 4, 2020 and cancelled the company’s Statement of Business Operations (“SBO”) and tariff on file with the Department. *Id.* at 18, App. 2. The annual return is a three-page form detailing a company’s name, address, intrastate revenue, and a brief description of its business operations in Massachusetts. Gardner’s compliance specialist Michelle Wells has stated that Gardner no longer operates a payphone at its premises and that the failure to file its 2017 return was an administrative oversight.¹

¹ The Department notes that Gardner’s payphone operations, or lack thereof, at the time of these discussions in 2021 is not determinative of Gardner’s requirement to file its annual return for 2017.

III. ANALYSIS

The Department determines on its motion that good cause exists to vacate the judgment against Gardner given that Gardner has come into compliance and that its delinquency was merely an administrative oversight. The Department reconsiders previously decided issues if extraordinary circumstances require that the Department take a fresh look at the record. *Verizon New England Inc.*, D.T.C. 13-6, Hearing Officer Ruling, Verizon MA Motion for Reconsideration & Clarification at 3 (Nov. 29, 2013); *Verizon New England Inc.*, D.T.C. 07-9, Order on Motion for Reconsideration & Clarification at 10 (Dec. 7, 2009); *Verizon New England, Inc.*, D.T.C. 06-61, Order on Clarification & Partial Reconsideration at 11 (May 11, 2012). The burden to demonstrate such extraordinary circumstances is on the party requesting reconsideration. *Berkshire Gas Co.*, D.T.E. 01-56-A, Order on the Motions of Berkshire Gas Co. & the Att’y Gen. for Reconsideration, Clarification, & Recalculation at 7-8 (May 8, 2002); *Sprint Commc’ns Co. L.P.*, D.T.E. 00-54-A, Order on Sprint’s Motion for Reconsideration; Motion to Admit Late-Filed Exhibit; Motion for Official Notice at 14-30 (May 3, 2001).

Extraordinary circumstances warranting reconsideration may exist when: (i) “previously unknown or undisclosed facts that would have a significant impact upon the decision already rendered” are newly brought to light; or (ii) an issue was wrongly decided due to the Department’s mistake or inadvertence. *Boston Edison Co.*, D.P.U. 90-270-A, Order at 2-3 (Sept. 27, 1991); *Mass. Elec. Co.*, D.P.U. 90-261-B, Order at 7 (Feb. 1, 1991); *New England Tel. & Tel. Co.*, D.P.U. 86-33-J, Order on Motions for Recalculation & Reconsideration at 2 (June 23, 1989). The Department has broad discretion on whether to vacate a judgment. *See Televergence Solutions, Inc.*, D.T.C. 18-AR, Order Vacating Judgment (Apr. 28, 2020) (“Televergence Order”); *Complaint of MCI WorldCom, Inc.*, D.T.E. 97-116-E, Order Denying Global NAPS,

Inc.’s Motion to Vacate the Dep’t Of Telecomms. & Energy’s Orders, D.T.E. 97-116-C and D.T.E. 97-116-D/99-39, & to Reinstate D.T.E. 97-116 at 11, 13 (July 11, 2000) (“The Department rules on each motion in each proceeding based on the form and contents of the motion before it and on the specific facts before the Department at that time In addition, the Department has broad discretion to decide whether or not to vacate a judgment.”). For the reasons discussed below, the Department reconsiders its cancellation of Gardner’s SBO and tariff and its assessment of statutory forfeitures, and vacates its judgment against the company.

Although carriers must file an annual return by March 31, the Department may, for good cause, fix a date later than March 31 for a carrier to file its annual return. G.L. c. 159, § 32; G.L. c. 166, § 11. The Department has determined that:

Good cause is a relative term and it depends on the circumstances of an individual case. Good cause is determined in the context of any underlying statutory or regulatory requirement, and is based on a balancing of the public interest, the interest of the party seeking an exception, and the interests of any other affected party.

N.E. Tel. Alt. Reg. Plan, D.P.U. 94-50, Order (May 12, 1995) at 51. Under this standard, the Department balances the effect of granting an extension on the party benefitting from the extension, on the public, and on any other party who might be affected. *See Televergence Order; In re Delinquent 2010 and/or 2011 Annual Returns*, D.T.C. 13-AR, Order on Reconsideration & Vacating Judgment (May 22, 2019) (“13-AR Order”) at 2; Order at 9. Gardner’s return was delinquent, but the company ultimately filed the return when current staff became aware of the delinquency. Consequences absent an extension include continued cancellation of Gardner’s authority to do business in Massachusetts, as well as forfeitures in an amount vastly exceeding the company’s 2017 reportable revenue.

The Department knows of no other party that would be affected by a decision to grant Gardner an extension. The Department does not condone Gardner's oversight about the status of its statutory requirements but finds that it ultimately acted in good faith by cooperating with the Department. Accordingly, the Department, on its own motion and for good cause, establishes June 11, 2021, as the filing deadline for Gardner's 2017 annual return. *See* G.L. c. 159, § 32; G.L. c. 166, § 11; Televergence Order; 13-AR Order at 5. The Department extends this one-time courtesy to Gardner with the expectation that Gardner will comply with the Department's requirements going forward. Having so extended Gardner's 2017 annual return filing deadline, Gardner is now current.

Based on the foregoing, the Department vacates the judgment against Gardner. Specifically, the Department vacates the judgment for two reasons: (1) given the above change of Gardner's deadline to file its 2017 annual return, the 2017 return is now considered to be timely filed; (2) the statutory forfeitures, if applied, would far exceed the company's 2017 reported revenues. *See* 13-AR Order at 5-6 (outlining similar reasons for why a judgment could be vacated). Accordingly, the Department vacates the judgment against Gardner.

IV. ORDER

Accordingly, after consideration, it is

ORDERED: That the judgment against Gardner is VACATED.

By Order of the Department:


Karen Charles Peterson
Commissioner

RIGHT OF APPEAL

Pursuant to G.L. c. 25, § 5, and G.L. c. 166A, § 2, an appeal as to matters of law from any final decision, order or ruling of the Department may be taken to the Supreme Judicial Court for the County of Suffolk by an aggrieved party in interest by the filing of a written petition asking that the Order of the Department be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Department within twenty (20) days after the date of service of the decision, order or ruling of the Department, or within such further time as the Department may allow upon request filed prior to the expiration of the twenty (20) days after the date of service of said decision, order or ruling. Within ten (10) days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court for the County of Suffolk by filing a copy thereof with the Clerk of said Court. Appeals of Department Orders on basic service tier cable rates, associated equipment, or whether a franchising authority has acted consistently with the federal Cable Act may be brought to the Federal Communications Commission pursuant to 47 C.F.R. § 76.944.